

• AO 451 (Rev.12/93) Certification of Judgment

FILED  
CLERK'S OFFICE  
JUN 27 2005  
VIRGINIA

UNITED STATES DISTRICT COURT

WESTERN

DISTRICT OF

VIRGINIA

BRANCH BANKING & TRUST COMPANY OF  
VIRGINIA,  
Plaintiff

V.

TODD W. FOWLER, et al.,  
Defendants

CERTIFICATION OF JUDGMENT  
FOR REGISTRATION IN  
ANOTHER DISTRICT

Case Number: 7:04CV00624

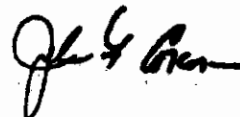
I, John F. Corcoran Clerk of the United States district court certify that the  
attached judgment is a true and correct copy of the original judgment entered in this action 4/29/05, as it  
Date  
appears in the records of this court, and that

no notice of appeal from this judgment has been filed, and no motion of any kind listed in rule 4(a) of the Federal Rules of Appellate  
Procedure has been filed

IN TESTIMONY WHEREOF, I sign my name and affix the seal of this Court.

6.20.05

Date



John F. Corcoran

Clerk



(By) Deputy Clerk

FILED  
CLERK'S OFFICE  
JUN 27 P 2:11  
U.S. DISTRICT COURT  
WESTERN DISTRICT OF VIRGINIA  
ROANOKE

## **Abstract Of Judgment**

Clerk's Office, U. S. District Court  
For The Western District Of Virginia  
Roanoke Division

June 10, 2005

BRANCH BANKING & TRUST COMPANY OF VIRGINIA,  
Plaintiff(s)

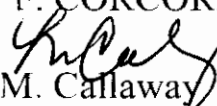
vs.

Civil Action No. 7:04CV00624

TODD W. FOWLER, et al,  
Defendant(s)

Judgment was rendered in favor of the plaintiff against the defendant on the 29th day of April, 2005 for the sum of \$296,153.30.

JOHN F. CORCORAN, CLERK

By:   
Deputy Clerk

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IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
ROANOKE DIVISION

BRANCH BANKING & TRUST )  
COMPANY OF VIRGINIA, a Virginia )  
banking company, )

Plaintiff, )

v. )

TODD FOWLER, et al., )

Defendants. )

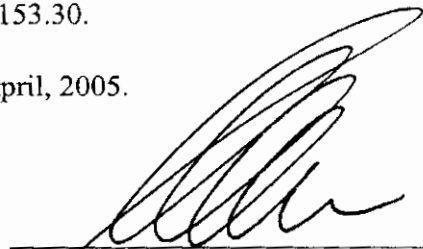
Civil Action No. 7:04CV00624


FINAL ORDER

By: Samuel G. Wilson  
United States District Judge

In accordance with the memorandum opinion entered this day, the court hereby ENTERS judgment in favor of the plaintiff, Branch Banking & Trust Company of Virginia, and against the defendants, Todd W. Fowler, Kevin T. Lilly, Robert Earl Barnett, and Michael A. Stone, jointly and severally in the amount of \$296,153.30.

ENTER: This 29th day of April, 2005.

  
UNITED STATES DISTRICT JUDGE

A TRUE COPY, TESTE:  
JOHN E. CORCORAN, CLERK  
BY:  DEPUTY CLERK

CLERK'S OFFICE U.S. DIST. COURT  
AT ROANOKE, VA  
FILED

APR 29 2005

JOHN F. CORCORAN, CLERK  
BY:  DEPUTY CLERKIN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
ROANOKE DIVISIONBRANCH BANKING & TRUST )  
COMPANY OF VIRGINIA, a Virginia )  
banking company, )

Plaintiff, )

v. )

TODD FOWLER, et al., )

Defendants. )

Civil Action No. 7:04CV00624

MEMORANDUM OPINION & ORDERBy: Samuel G. Wilson  
United States District Judge

Plaintiff, Branch Banking & Trust Company of Virginia (BB&T), has filed this diversity action seeking to enforce a note against Kevin T. Lilly, Robert Earl Barnett, Michael A. Stone, and Todd A. Fowler, who guaranteed the note on behalf of Quorum Radio Partners (Quorum). The defendants waived service and had sixty days to file an answer or other responsive pleading. None of the defendants filed an answer or responsive pleading. BB&T moved for a default judgment, and the court took that motion under advisement to give the parties a month to negotiate payment of the note. During that period, the defendants did make two \$5,000 payments; however, they did not fully satisfy the obligation, and, at the close of that month, BB&T renewed its motion for default judgment. Three of the defendant guarantors, Lilly, Barnett, and Stone (hereinafter, "the guarantors"),<sup>1</sup> moved for an extension of time to file an answer or responsive pleading.

The matter is before the court on BB&T's motion for default judgment under Federal

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<sup>1</sup>The fourth note guarantor, Fowler, has never filed an answer, did not appear at the hearing before the Magistrate Judge, and has not moved for an extension of time. Nevertheless, the court's decision on BB&T's motion for a default judgment applies to Fowler just as it does to the other guarantors.

Rule of Civil Procedure 55(b)(2) and on the motion of the guarantors for an extension of time to file an answer or responsive pleading. The court submitted the matter to the Magistrate Judge for a Report and Recommendation. The Magistrate Judge held a hearing and ultimately found that the guarantors had failed to provide any excuse besides "inattention" for failing to respond and that BB&T had presented "sufficient evidence to support its claim for damages, costs, and fees by way of uncontradicted affidavits and testimony." Thus, the Magistrate Judge recommended that the court deny the guarantors' motion for an extension of time and enter default judgment in favor of BB&T in the amount of \$296, 153.30 (\$256,153.30 to cover the loan principal, interest, and late fees and \$40,000 to cover attorneys' fees<sup>2</sup>).

The guarantors timely filed objections to the Magistrate Judge's Report and Recommendation. For the first time, the guarantors claimed that the identity of the primary obligor to the note was unclear, alleging that Quorum had held itself out as a Virginia corporation at times and as a Missouri corporation at other times.<sup>3</sup> According to the guarantors, awarding BB&T a default judgment in light of this discrepancy would result in "a manifest injustice." The guarantors have presented no affidavits or exhibits to support their claim, and the guarantors have not articulated how confusion over Quorum's state of incorporation might alleviate their responsibility for Quorum's debt. Regardless of whether Quorum is a Missouri corporation or a

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<sup>2</sup>When calculating the attorneys' fees, the Magistrate Judge relied upon a BB&T witness, John C. Stone, who testified that BB&T would likely incur \$10,000 to \$15,000 in legal fees per defendant in order to collect on the judgment. The Magistrate Judge calculated an award on the lower end of that scale (\$10,000 x 4 defendants = \$40,000), and the guarantors have not objected to that calculation.


<sup>3</sup>Though the guarantors never presented this argument to the Magistrate Judge, the court may consider the argument in deciding whether to adopt the Magistrate Judge's Report and Recommendation. See Doe v. Chao, 306 F.3d 170, 183 n9 (4th Cir. 2003).

Virginia corporation, it is undisputed that the guarantors executed guaranty agreements to jointly and severally guarantee Quorum's obligations under the note with BB&T. Further, the guarantors undisputedly made two \$5,000 payments toward the debt, evidencing an awareness of their obligation.

Therefore, it is hereby **ORDERED** and **ADJUDGED** that the Report and Recommendation of the Magistrate Judge is **ADOPTED** in its entirety. The court hereby **DENIES** the guarantor's motion for an extension of time to file an answer or responsive pleading and **GRANTS** a default judgment in favor of the plaintiff and against the defendants in the amount of \$296, 153.30.

ENTER: This 29<sup>th</sup> day of April, 2005.

  
UNITED STATES DISTRICT JUDGE

A TRUE COPY, TESTE:  
JOHN F. CORCORAN, CLERK  
BY:   
DEPUTY CLERK